

GE ENERGY - ASSET MANAGEMENT
LM6000 SPRINT ENGINE LEASE AGREEMENT

AGREEMENT NO. 2404-08BU

PURPOSE

The purpose of the GE Energy Lease Program is to help LM Users minimize or reduce their overall life cycle cost and to assist them in maximizing site availability by providing lease gas turbine equipment when their equipment is at a depot for repair or cannot be repaired at the User's site ("Site") within a reasonable amount of time. ***The Back Up Lease Program is intended for Users with a spare uninstalled engine that is dedicated to supporting and replacing the installed engine(s).***

This LM6000 SPRINT Engine Support Agreement ("Agreement") by and between General Electric International Inc., a Delaware corporation acting through its GE Energy Business ("GEE"), and The City of Santa Clara, a corporation organized and incorporated under the laws of the State of _____ ("User"), shall be effective as of _____ (the "Effective Date").

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

I. ENGINE LEASE PROGRAM

The parties agree to participate in the LM6000 SPRINT Engine Lease Program, wherein the User will pay GEE an Annual Fee for each of the User engines ("Covered Engine(s)" as described in Addendum A) for every year of the six (6) years of the Agreement, and the Weekly Use Rate Fees, as identified in Addendum A, and wherein, in consideration therefore, GEE will lease LM6000 SPRINT Gas Turbine equipment under the terms and conditions described herein and the GE Energy Lease Agreement General Terms and Conditions, Form GT-7140-G (6/07), attached hereto and incorporated herein.

II. GEE'S OBLIGATIONS UNDER THIS AGREEMENT

- A. GEE will, during the six (6) year term of this Agreement, deliver an operable lease LM6000 SPRINT Gas Turbine ("Lease Unit") to the U.S./Canada Continental Site designated by the User (hereby established as the "Delivery Point" referred to in Form GT-7140-G (6/07)) and qualified technical direction for its installation and removal, within seventy-two (72) hours of oral or written receipt by GEE of notification of need from the User (see complete instructions in Article III.D. and Addendum B). Any such oral notice will be made to the GEE Lease Pool Manager ("GEE LPM"), or his delegated representative, and shall be effective when received, if the User confirms the request by issuance and submittal, within twenty-four hours of the initial oral request, of a written request to the numbers identified in Article V. See complete instructions in Article III.D and Addendum B.

NOTE: The User shall make the request for a Lease Unit only if the spare engine or power turbine ("Spare Engine" as defined in Addendum A) is installed, in repair or otherwise unavailable. If User has more than one (1) Covered Engine, planned outages shall not be scheduled concurrently.

As part of this Agreement, GEE will be responsible for arranging and paying for Lease Unit transportation to and from the Delivery Point and will provide one (1) qualified GEE Field Service Representative per standard working shift (each shift not to exceed 12 hours) who will assist in the following activities.

- The transfer of hardware from the Covered Engine to the Lease Unit and installation of configuration hardware.
- Connections to the Lease Unit during installation.
- Issues related to the Lease Unit during start-up.
- Disconnections of the Lease Unit during removal.
- Transfer of the User's hardware from the Lease Unit back to the Covered Engine.

Additional Field Service support will be covered at the User's expense. GEE is not responsible for Site or package problems or other issues unrelated to the Lease Unit.

1. In the event a Lease Unit becomes inoperative during the term of this Agreement due to causes reasonably determined by GEE to be within its control, GEE will, at its option, either repair the Lease Unit at the Site or deliver a replacement Lease Unit at the Delivery Point at GEE's expense. If GEE determines that a repair is possible, a Field Service Representative and required materials will be provided for the repair at no charge to the User. The User will not be billed for usage, on a prorated daily basis, during this period nor will GEE be liable for penalties during this period when the Lease Unit is inoperative. If GEE determines that a replacement Lease Unit is required, it will be provided within seventy-two (72) hours of said determination. GEE will provide a Field Service Representative for the removal of the inoperative Lease Unit and installation of the replacement Lease Unit at no charge to the User. The Field Service Representative will remain at the Site until completion of the initial start up for either the repaired or replacement Lease Units.

GEE and the User are jointly responsible for proper execution of the Lease Unit Event Report form to document installation, incidents and removals of the Lease Unit. See Addendum C.

- B. Should GEE (except for Excusable Delays as described in Article X of Form GT-7140-G (6/07)) fail to deliver a Lease Unit within the time described in Article II.A. and II.A.1. above, GEE will, as the User's sole and exclusive remedy therefore, be liable for late delivery penalties as described in Addendum A up to a maximum liability per Lease Unit per occurrence which is equal to the Base Year Annual Fee for this Agreement. In addition, over the life of this Agreement, GEE's total late delivery penalties hereunder shall in no event exceed three (3) times the Base Year Annual Fee for this Agreement. However, penalties will only be assessed against GEE if the above delays result in a complete shutdown of operations. Additionally, if it is determined that a Lease Unit (i) was not the proper remedy for the User's problem, or (ii) was required due to failure of non-GE turbo-machinery parts, associated with the gas turbine on the Covered Engine, no penalties will be assessed and GEE will have no liability for late delivery.

Penalties assessed against GEE by virtue of such late delivery will be in the form of a credit memorandum to be applied against the subsequent Annual Fee and the Weekly Use Rate payments to be made to GEE by the User. Any unliquidated credit due User at the expiration or termination of this Agreement shall be paid to the User within thirty- (30) days.

III. USER'S OBLIGATIONS UNDER THIS AGREEMENT

- A. User agrees to pay an Annual Fee (as described in Addendum A) for each of the six (6) years of the term of this Agreement to provide Lease Unit coverage. The first payment shall be within thirty- (30) days of the Effective Date of this Agreement and each of the five (5) subsequent payments are due GEE by the subsequent five anniversaries of the Effective Date. GEE will invoice User for the Annual Fees at least thirty- (30) days prior to the payment

due date. Payment in full of all invoices will be within 30 days of the date of invoice, as described in Form GT-7140-G (6/07), Article II.B.

- B. User further agrees to pay a Weekly Use Rate Fee for each week as described in Addendum A or, on a pro-rated daily basis for any fraction thereof, for Lease Unit use which commences on the date the Lease Unit is operational (breaker closed) or seven (7) days after the Lease Unit arrives at the Site, whichever comes first, and ends when the Lease Unit is removed from installation at the Site. *NOTE: New Users who request a Lease Unit within forty five (45) days of executing a member Agreement will be charged at non-member rates (3.5 x member rates) for that initial lease usage event.* If the lease period extends beyond ten (10) weeks due to reasons that are not caused by GEE, the User will pay the applicable Weekly Use Rate as described in Addendum A. Payment in full of all invoices will be within 30 days of the date of invoice, as described in Form GT-7140-G (6/07), Article II.B.

The Annual Fee and the Weekly Use Rate Fee will be adjusted according to the GEE Price Adjustment formula specified in Form GT-7140-H (1/07), attached hereto and incorporated herein on each anniversary date of the Agreement.

For purposes of calculating the Price Adjustment provided for in Form GT-7140-H (1/07), the following definitions will apply.

"Base Price" shall be the Annual Fee and Weekly Usage Rate Fees as identified in Addendum A.

The "Base Year" shall be the year of the Effective Date of the Agreement.

The "Year of Delivery" shall be each relevant year of the six-year term hereof in which the anniversary of the Effective Date occurs.

- C. Any taxes (with the exception of taxes levied by any U.S. governmental authority measured by net income or profit) including but not limited to, income taxes ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, storage, transfer, turnover, use value-added taxes and good and services taxes, or duties, customs fees, or other similar fees, charges, or assessments levied by a taxing authority in [Users Country] ("Taxes") against GEE in connection with this Agreement shall be for User's account and shall be paid directly by User to the appropriate taxing authority. If User is required to withhold Taxes from the amounts to be paid to GEE under this Agreement, User shall be required to gross-up its payments to GE such that, after withholding the required amount of Tax, User shall pay to GEE a net amount equal to the full amount of the Annual Fee or the Weekly Rate Usage Fee agreed to pursuant to Addendum A of this Agreement. If GEE is required to pay any Taxes in the first instance, User shall reimburse GEE in U.S. dollars (including any costs of currency conversion), for the amount of any such payments, together with any applicable interest and penalties, upon the presentation of GEE's invoices.
- D. User is responsible for notifying GEE when a Lease Unit is required. User may initiate the request for a Lease Unit with an oral notice to the GEE Lease Pool Manager ("GEE LPM"), or their delegated representative, which shall be effective when received, only if the User confirms the request by providing all the information required in Section 1 of the Request for Lease Unit (Addendum B) and faxing or emailing as instructed on the form, within twenty-four hours of the initial oral request. If the Request for Lease Unit, completed in its entirety, is not received within this twenty-four (24) hour period, assessment for the late penalties will be based upon the date and time that the Request for Lease Unit form is received, not from the oral request. Also, if the User does not provide the initial oral request, completion and receipt by the GEE LPM of Section 1 of the Request for Lease Unit is required. It is the responsibility of the User to ensure that the submitted Request for Lease Unit form is received by the GEE LPM through personal contact. GEE will, at the first opportunity, complete and fax or email to the User the information contained in Section 2 of the Request for Lease Unit form, thereby

acknowledging the User's request. User will then complete Section 3 of the Request for Lease form by providing a valid Certificate of Insurance for the Lease Unit and faxing or emailing the Request for Lease Unit and the Certificate of Insurance to the GEE LPM. NOTE: If a Lease Unit is required due to failure of non-GE turbo-machinery parts, associated with the gas turbine on the Covered Engine, non member rates (3.5 times the then current member rates) will apply for the Lease Unit usage period associated with that event.

User and GEE are jointly responsible for proper execution of the Lease Unit Event Report form upon installation and removal of the Lease Unit and to document any incidents that occur while the Lease Unit is at the Site. Completed form shall be faxed or emailed to the GE LPM. See Addendum C.

- E. User agrees to allow GEE to utilize any hardware from Covered Engine (including engine-mounted kits) at no charge on the Lease Unit during the period the Lease Unit is operated at the User's installation. Kits include, but are not limited to, fuel nozzles, manifolds and piping, starters, temperature and pressure sensing and indicating systems.

If this hardware fails while in use on the Lease Unit but is the result of normal operation, the User is responsible for the cost of replacement. If the hardware failure is directly caused by the Lease Unit it will be the responsibility of GEE to obtain a replacement.

GEE will be responsible for the consumables required during the installation of the Lease Unit. The User is responsible for the consumables required during the reinstallation of their unit.

User is responsible for performing a functional check of the Lease Unit immediately after installation and immediately prior to removal of the Lease Unit from User's installation (see Attachment A) as further explained in Article IV.6 of Form GT-7140-G (6/07).

- F. The User is responsible for the removal and installation of the Covered Engine, and the Lease Unit except as specified in Paragraph II.A.1., above. If the User hires the services of GEE Field Service Representative to remove and reinstall the Covered Engine, the User will be responsible for one half of the travel time charges to and from the Site.
- G. User is responsible for any damages, including but not limited to repair charges, due to operation of the Lease Unit outside the then current operating limits as specified in the GEE Operations & Maintenance Manual, and due to other causes as provided in Article V.B. of Form GT-7140-G (6/07).
- H. Should the User request a Lease Unit per Article II.A. and III.D. hereof and subsequently determine that a Lease Unit is not required, User will reimburse GEE for the actual transportation and directly related costs (including but not limited to customs duties and freight forwarder fees) incurred by GEE as a result of this redetermination.
- I. User will provide removal schedule to the GEE LPM and prior to removal of any installed Lease Unit, User agrees to perform an off line water-wash per the GEE Operations & Maintenance Manual (see Article IV.6 of Form GT-7140-G (6/07)) in preparation for redelivery to GEE at the Delivery Point. The Lease Unit should be removed and be immediately made available for return to GEE upon return of the Covered Engine, however, should the User elect to defer the re-installation of the Covered Engine (and continue operations with the GEE Lease Unit) beyond seven (7) days after the Covered Engine has arrived at the Site and is available for re-installation, or fourteen (14) days after ready -to-ship status of the Covered Engine (see Addendum A) at the depot, the User shall pay GEE the then-current applicable non-exclusive weekly lease charges for a non-member. These rates will extend through each week or fraction of a week that the Lease Unit remains unavailable to GE beyond the seven (7) day period. After the seven (7) day period, GEE also reserves the right to remove the

Lease Unit from the Site if not released by the User.

- J. In the event that a Lease Unit requires maintenance or troubleshooting during the course of the lease usage event, it will be performed by GEE Field Service Representatives unless other arrangements are agreed to by the GEE LPM. It is the User's responsibility to notify the GEE LPM when such maintenance or troubleshooting is required.

IV. AGREEMENT CANCELLATION

- A. Either party shall be entitled to terminate this Agreement when the other party has committed a material breach of contract and such breach has not been remedied within thirty (30) days of written notice by the non-breaching party of the breach. GEE also has a right to withhold its service under this Agreement any time the User has breached its payment or other material obligations.

Failure of the User to make timely annual payment of the Annual Fee and/or payment for the usage of a Lease Unit shall constitute a material breach. GEE shall operate to terminate this Agreement and shall make, in addition to any then outstanding and unpaid amounts, eighty percent (80%) of the outstanding unpaid Annual Fee for all years of the six-year term of the Agreement then outstanding due immediately and payable upon demand.

- B. Upon thirty- (30) days written notice, User may cancel this Agreement at any time during the term hereof, but will be liable in addition to any then outstanding and unpaid amounts, for payment of eighty percent (80%) of the unpaid Annual Fee for all years of the six-year term of the Agreement then outstanding at the time of cancellation.
- C. This Agreement may be canceled by mutual written agreement without penalty to either party.
- D. In the event that the User permanently discontinues operation of the Covered Engine during the term hereof, the requirement to pay eighty percent (80%) of the outstanding unpaid Annual fee stated in Addendum A above, will be waived.

V. NOTICES

Any notice required or permitted to be given hereunder shall be in writing or electronic transmission, unless otherwise indicated, and addressed to the following addresses or to such address or addresses as either of the parties may from time to time designate by notice to the other. All notices so addressed are effective when received.

TO USER:

The City of Santa Clara
Silicon Valley Power
1500 Warburton Ave.
Santa Clara, CA 95050
Tel:
Fax:
Email:

TO GEE:

For Agreements

General Electric International Inc.
ATTN: GEE Asset Mgmt. MD S-133
1 Neumann Way, Box 156301
Cincinnati, OH 45215-6301
Tel: (513) 552-2512
Fax: (513) 552-5008
Email: karen.cartwright@ae.ge.com

For Lease Pool

ATTN: GEE LPM - Mary Caposela
Tel: (513) 552-5355
Fax: (513) 552-5008
Email: mary.caposela@ae.ge.com

VI. GENERAL

In the event of any conflict between the terms and conditions set forth in this Agreement and those set forth in GEE Form GT-7140-G (6/07), the terms and conditions of this Agreement shall take precedence.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in duplicate by its duly authorized representative.

THE CITY OF SANTA CLARA

By: _____

Title: City Manager

Date: _____

GENERAL ELECTRIC INTERNATIONAL INC.

By: 

Title: Gen. Mgr. GE Aero Energy, Services

Date: 11/6/08

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

Attachments:

1. Addendum A
2. Addendum B
3. Addendum C
4. Form GT-7140-G (6/07), GE Energy "Lease Agreement -Terms and Conditions"
5. Form GT-7140-H (1/07), GE Energy "Price Adjustment"
6. Attachment A

**ADDENDUM A
ENGINE LEASE AGREEMENT**

AGREEMENT NO. 2404-08BU

Effective Date: _____

Expiration Date: _____

Covered Engine(s): GT S/N - 191-498
GT S/N -191-502

Site: Silicon Valley Power
DVR Power Plant
850 Duane Ave.
Santa Clara, CA 95054

Spare Engine: GT S/N - 191-555

Fee Schedule:

	Base Price	2nd Year	3rd Year	4th Year	5th Year	6th Year
Annual Fee	\$ 47,819					
GT Weekly Fee: 1-10	\$ 36,167					
Over 10	\$ 58,058					
GT Late Delivery Penalty	\$1,000/hr					
Escalation Rate						

NOTE: Weekly Fees reflect an adjustment for water-injected application plus a 10% discount.

ADDENDUM B
REQUEST FOR LEASE UNIT

SECTION 1 - USER COMPLETES

COMPANY NAME (USER) _____		
LEASE AGREEMENT # _____	LEASE UNIT TO REPLACE ENGINE S/N _____	
REASON A LEASE UNIT IS REQUIRED _____		
TYPE OF ENGINE REQUIRED (BE SPECIFIC) _____		
TYPE OF CONFIGURATION REQUIRED (SEE NOTES) _____		
NOTE: IF LM6000 SPRINTPC – SPRINT/NON-SPRINT; VIGV/ FIGV REQUIRED?		
BROKER NAME (if applicable) _____	BROKER EMAIL _____	
BROKER ADDRESS _____		
BROKER CONTACT NAME _____	BROKER PHONE # _____	
SHIP TO ADDRESS _____		
SHIP TO CONTACT NAME _____	SHIP TO PHONE # _____	
ORAL NOTICE TO GE ENERGY: DATE _____	TIME _____	FROM _____
SIGNATURE _____	DATE _____	
PHONE # _____	EMAIL _____	
Fax to 513-552-5008 Attn: Mary Caposela - OR - Email to Mary.Caposela@ae.ge.com IMPORTANT: MUST BE RECEIVED BY GE ENERGY WITHIN 24 HRS OF ORAL NOTICE		

SECTION 2 - GE ENERGY COMPLETES

GE ENERGY ACKNOWLEDGES RECEIPT: DATE _____	TIME _____
EST. DELIVERY DATE _____	S/N OF LEASE UNIT _____
CARRIER _____	AWB # _____
VALUE OF ENGINE \$ _____	
SIGNATURE _____	DATE _____
Fax to User	

SECTION 3 - USER COMPLETES

CERTIFICATE OF INSURANCE ATTACHED HEREIN _____	
SIGNATURE _____	DATE _____
Fax to 513-552-5008 Attn: Mary Caposela - OR - Email to Mary.Caposela@ae.ge.com	

ADDENDUM C

LEASE UNIT EVENT REPORT

COMPANY NAME _____ SITE LOCATION _____

INSTALLATION ☐

LEASE UNIT ARRIVE AT DELIVERY POINT: S/N _____ DATE _____ TIME _____

LEASE UNIT OPERATIONAL (BREAKER CLOSED): DATE _____ TIME _____

MATERIAL REMOVED FROM CUSTOMER ENGINE AND INSTALLED ON LEASE UNIT?

NO ☐

YES ☐

IF YES, ATTACH PARTS LIST

NAME OF CUSTOMER REPRESENTATIVE (print) _____

SIGNATURE OF CUSTOMER REP. _____ DATE _____

SIGNATURE OF GE FIELD REP OR CSO _____ DATE _____

Complete after installation and fax to 513-552-5008 – OR– Email to Mary.Caposela@ae.ge.com

INCIDENT ☐

INCIDENT OCCURRED: LEASE UNIT S/N _____ DATE _____ TIME _____

DESCRIPTIN OF INCIDENT _____

INCIDENT CORRECTED: DATE _____ TIME _____

SIGNATURE OF CUSTOMER REP. _____ DATE _____

SIGNATURE OF GE FIELD REP OR CSO _____ DATE _____

Complete after installation and fax to 513-552-5008 – OR– Email to Mary.Caposela@ae.ge.com

REMOVAL ☐ LEASE UNIT S/N _____

SCHEDULED ☐ UNSCHEDULED ☐ REASON _____

CUSTOMER MATERIAL REMOVED FROM LEASE UNIT AND INSTALLED ON CUSTOMER ENGINE

YES

GE OWNED MATERIAL REMOVED FROM LEASE UNIT AND INSTALLED ON CUSTOMER ENGINE:

YES ☐

NO ☐

IF YES, ATTACH PARTS LIST FOR INVOICING TO CUSTOMER

SIGNATURE OF CUSTOMER REP. _____ DATE _____

SIGNATURE OF GE FIELD REP OR CSO _____ DATE _____

Complete after installation and fax to 513-552-5008 – OR– Email to Mary.Caposela@ae.ge.com

**GENERAL ELECTRIC COMPANY
GE ENERGY
LEASE AGREEMENT - GENERAL TERMS & CONDITIONS**

These general terms and conditions together with the special terms and conditions set forth in the Lease Agreement shall be the only terms and conditions applicable for the lease of equipment. All preprinted terms and conditions appearing on the face or reverse side of any document provided by Lessee shall not apply.

ARTICLE I - LEASE EQUIPMENT

General Electric Company, acting through its GE Energy business (hereinafter referred to as "GEE") agrees to lease to Lessee and Lessee agrees to lease from GEE items of equipment (hereinafter referred to as "Equipment") as described in the Agreement.

ARTICLE II - TERM, LEASE FEES, PAYMENT AND TAXES

- A. The term and fees of the lease shall be as specified in the Agreement.
- B. Lessee shall pay GEE the agreed fees in cash, in United States of American ("U.S.") Dollars, at the remittance location specified on the invoices of GEE, without right of set-off, in full, within 30 days (30) days after invoice date.

In addition to the foregoing, Lessee shall pay interest to GEE, at the rate of one and one-half percent (1-1/2%) per month (or any fraction thereof), not to exceed the lesser of eighteen percent (18%) per annum or the maximum amount permitted by applicable law, on all amounts not timely paid in accordance with this Agreement.

In addition to its other rights, if Lessee fails to fulfill any of the payment conditions in this Agreement, GEE may suspend performance and delivery and/or thereafter require full or partial payment in advance. Any cost incurred by GEE in accordance with such suspension (including storage costs) shall be payable by Lessee upon submission of GEE's invoices.

- C. Any taxes (including, without limitation, turnover or value added taxes), duties, fees, charges, or assessments of any nature assessed or levied by any governmental authority in connection with the delivery, importation, lease, use, ownership or possession of Equipment by Lessee (collectively, "Taxes") whether levied against Lessee or against GEE shall be for Lessee's account and shall be paid directly by Lessee to the governmental authority concerned; provided that Lessee shall not be required to pay any Taxes (i) on or measured by the net income or, in lieu thereof, the net worth, gross or net receipts or capital of GEE, (ii) assessed or levied in respect of any Equipment after return of such Equipment to GEE or (iii) so long as Lessee is contesting the same at Lessee's expense in good faith by appropriate proceedings and the nonpayment thereof of such proceedings do not materially adversely affect GEE's title to or interest in the Equipment if GEE is required by Law or otherwise to pay any such levy and/or fines, penalties, or assessments (x) in the first instance or (y) as a result of Lessee's failure to comply with any applicable laws or regulations governing the payment of such by Lessee, the amount of any payments so made by GEE shall be reimbursed by Lessee to GEE upon submission of GEE's invoices, provided that Lessee shall not be required to reimburse GEE for any Tax payment made pursuant to clause (x) above unless prior to making such payment GEE shall have notified Lessee of such Tax and shall have afforded Lessee a reasonable opportunity to contest the same.

ARTICLE III - TRANSPORTATION

Equipment shall be made available to Lessee at the Delivery Point specified in the Agreement. GEE shall be responsible for arranging and paying for transportation of the Equipment to and from this Delivery Point: Lessee shall be responsible for arranging and paying for transportation of the Equipment from this Delivery Point to Lessee's installation and its return from Lessee's installation to the Delivery Point.

ARTICLE IV - USE, OPERATION AND TITLE

A. Lessee agrees to:

1. Operate and maintain Equipment in accordance with GEE's manuals and instructions provided to Lessee and also in accordance with all applicable laws and regulations.
2. Obtain and pay for all license and inspection fees, which may become due for use of the Equipment by Lessee.
3. Install and subsequently remove Equipment into/from Lessee's installation. GEE will provide installation and removal technical assistance when requested by Lessee, the cost of which will be as identified in the Agreement.
4. Perform only those repairs, tests or modifications of Equipment, which have been specifically authorized by GEE.
5. Maintain a log that describes maintenance events and utilization of the Equipment while in Lessee's possession.
6. Where the Equipment is a gas generator or gas turbine, Lessee will perform or have performed a functional check of Equipment immediately after installation and immediately prior to removal of Equipment from Lessee's installation. *Lessee shall also perform an off line water-wash immediately prior to removal of Equipment in accordance with the GEE Operations and Maintenance Manual.* Lessee shall furnish GEE with the pertinent data resulting from the functional checks by completing the Data List - Lease Engine Functional Test, a copy of which is attached hereto as Attachment A. Lessee shall forward the Attachment A at the time the Equipment is returned to GEE. If Lessee does not perform or have performed the functional tests *or the off line water-wash* as specified above, including the completion of Attachment A, Lessee shall reimburse GEE for all reasonable costs incurred by GEE as a result of Lessee's failure to so perform. Such costs shall be those costs required to enable GEE to validate the service condition of the Equipment by retesting including transportation charges, if necessary. The price shall be based on GEE's then-current labor rates.
7. Not permit any lien or encumbrance against Equipment. In addition, Lessee agrees (i) to not install any Equipment in an installation owned by, or subject to a mortgage, lien or other encumbrance in favor of any third party, unless such third party shall have expressly and effectively agreed in writing (which agreement may be contained in the lease, mortgage or other agreement covering such installation) that neither it nor its successors and assigns will acquire or claim any right, title or interest in or lien on such Equipment by reason of such Equipment being installed, and (ii) Lessee shall not make any assignment or sublet any Equipment hereunder or any interest in this Agreement without the express prior written consent of GEE. Any attempt to so assign or sublet shall constitute an act of default hereunder and such assignment or sublease shall be void and without effect.

8. Not remove any marking on the Equipment, which identify the Equipment as the property of GEE or others. In addition, Lessee shall execute and title any documents, which in GEE's opinion are desirable to protect GEE's interest in the Equipment.
- B. Title to the Equipment is, and shall remain, in GEE or, in the event that GEE shall have leased such Equipment from another entity, in the owner thereof.

ARTICLE V - REPLACEMENT AND REPAIR

- A. In the event the Equipment becomes inoperable during the term of the lease, except for causes set forth in Paragraph B. of this Article, GEE will, at its discretion, either repair the Equipment or deliver to Lessee replacement Equipment, prepaid to Lessee's installation under the terms and conditions of the Agreement.
- B. The obligations of GEE in Paragraph A. of this Article shall not apply to any Equipment if it has been reasonably determined by GEE that the Equipment:
1. Has been improperly installed (except as due to a fault in the technical assistance provided by GEE during its installation) or not maintained in accordance with GEE's instructions; or
 2. Has been operated contrary to applicable recommendations in GEE manuals, bulletins or other written instructions; or
 3. Has been subject to misuse, neglect or accident; or
 4. Has been subject to foreign object damage.

ARTICLE VI - LIMITATION OF LIABILITY & INDEMNIFICATION

- A. The total liability of GEE arising out of, connected with or resulting from the leasing of the Equipment, or its use (whether the claim alleges negligence of any degree, breach of contract or otherwise) during the contract period for any one unit shall not in any event exceed the total Annual Fee (number of years times the Annual Fee Base Price) for that unit as referenced in Addendum A of the Agreement and upon the expiration of the term of the lease all such liability shall terminate. The foregoing shall constitute the sole remedy of the Lessee and the sole liability of GEE. Notwithstanding any other provision of the Agreement, in no event shall GEE be liable to the other for any incidental, special or consequential damages. The provisions of this Article VI.A., shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Agreement, except to the extent that such provisions further restrict GEE's liability.
- B. It is agreed that Lessee will save and hold GEE and any third party Equipment owner harmless from and indemnify them against all claims, costs, expenses, damages and liabilities, including personal injury, death or property damage claims arising out of Lessee's operation or use, except that which results from the negligence of GEE (in manufacturing the Equipment or otherwise) or such third party Equipment owner.

To the extent permitted by law, GEE agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising there from, for which City shall become liable arising from GEE negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by GEE pursuant to this Agreement.

ARTICLE VII - EXPORT SHIPMENT

Lessees who intend to use Equipment outside the United States shall be responsible for obtaining any required Government authorization such as Export Licenses or any other required Governmental authorization. GEE and Lessee shall assist each other in securing and complying with such authorizations. Lessee agrees to comply with all applicable U.S. Export Control Laws and regulations. GEE shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed.

ARTICLE VIII - RISK OF LOSS OR DAMAGE

Risk of loss or damage of the Equipment shall pass from GEE to the Lessee when the Equipment arrives at the Delivery Point specified in the Agreement. The risk of loss or damage shall pass back to GEE when Lessee returns the Equipment to that Delivery Point.

ARTICLE IX - INSURANCE

Lessee shall, at its own cost and expense, provide "all risk" insurance in an amount not less than the Stated Value in the Customer Service Support Services Price Catalog. **For 2008, this value is \$5,799,500. This value is updated yearly, and will be available upon request.** Lessee shall cause its insurers to waive their rights of subrogation against GEE and any third party Equipment owner and shall have GEE and any third party Equipment owner named as a loss-payee as far as their interest may appear. Lessee shall, at its own cost and expense, maintain appropriate public liability and property damage insurance, including contractual liability insurance to support its obligation under ARTICLE VI.B. above. The policies shall further provide that the insurance will not be canceled or significantly altered by insurers until after 30 days written notice to GEE. Lessee will furnish GEE with certificates of insurance certifying the coverage as agreed upon.

For Services performed on Lessee property under this Agreement, GEE shall provide insurance in accordance with the AGREEMENT FOR SERVICES by and between the CITY OF SANTA CLARA, CALIFORNIA, and GE PACKAGED POWER, INC.

ARTICLE X - EXCUSABLE DELAYS

GEE shall be excused from and shall not be liable for any delays in its delivery or failure to deliver Equipment hereunder, and shall not be deemed to be in default for any failure of performance hereunder, due to causes beyond its reasonable control. Such causes shall include, but not be limited to, acts of God, acts (or failure to act) of Lessee or civil or military authority, government priorities, fires, strikes, labor disputes, work stoppage, floods, epidemics, war (declared or undeclared), riot and delays in transportation not caused by GEE. In the event of any such delay, the date of delivery and redelivery shall be extended for a period equal to the time lost by reason of the delay.

ARTICLE XI - RETURN OF EQUIPMENT

At the end of the period of use of the Equipment or upon termination of the lease, whichever occurs later, Lessee will, at its own cost and expense, promptly cause Equipment to be prepared for shipment and return it freight prepaid to GEE at the Delivery Point set forth in the Agreement or to such other location as may be mutually agreed upon. Such Equipment shall be returned to GEE in the same condition as it was received by Lessee except for reasonable wear and tear due to operation for the intended purpose stated in the Agreement.

Lessee further agrees to pay GEE the price of repairing or replacing Equipment or any part thereof damaged, destroyed or not returned.

ARTICLE XII - DEFAULT

If Lessee fails to make any payment of fees or other charges after such amounts are due and payable, or if Lessee fails to comply with any **material** provisions of this Agreement, or if Lessee becomes insolvent or ceases to do business as a going concern, or if Lessee makes an assignment for the benefit of creditors, or if a petition in bankruptcy or for arrangement or reorganization is filed by or against Lessee, or if property of Lessee be attached or a receiver be appointed for Lessee or Lessee's property GEE shall have the right, at Lessee's expense, to take possession of the Equipment wherever it may be located, without demand or notice and without any court order or other process of law and to pursue any other remedy available to it at law or in equity. Lessee shall pay GEE's costs for retaking possession of the Equipment. In any such event, GEE may, at its option, terminate this Agreement. Notwithstanding any repossession or other action that GEE may take, Lessee shall be and remain liable for the full performance of all obligations on the part of Lessee to be performed under this Agreement. GEE's waiver of any default on the part of Lessee shall not constitute a waiver of subsequent defaults.

ARTICLE XIII - NOTICES

Any notice shall, unless otherwise specified in the Agreement, be effective upon receipt and shall be in writing and be delivered or sent by mail or electronic transmission to the respective parties.

ARTICLE XIV - WAIVER OF GOVERNMENTAL IMMUNITY

This article applies to Lessee's who are owned in whole or in part, by a foreign Government. To the extent that Lessee or any of its property is or becomes entitled at any time to any immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any competent court, from service of process, from attachment prior to judgment from attachment in aid of execution, or from execution prior to judgment, or other legal process in any jurisdiction, Lessee for itself and its property does hereby irrevocably and unconditionally waive, and agree not to plead or claim, any such immunity with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement or the subject matter hereof. Such agreement shall be irrevocable and not subject to withdrawal in any and all jurisdictions including, without limitation, under the Foreign Sovereign Immunities Act of 1976 of the United States of America.

ARTICLE XV - GENERAL PROVISIONS

- A. GEE shall have the right to inspect Equipment and Lessee's records with respect thereto at all reasonable times and upon reasonable notice during the term of the lease.
- B. Any assignment of this Agreement or any rights or obligations there under by either party without the prior written consent of the other party shall be void except that Lessee's consent shall not be required for the substitution of an affiliate of GEE or another wholly owned subsidiary of GEE. In the event of such substitution, Lessee shall be advised thereof in writing.
- C. This Agreement shall be construed, interpreted and applied in accordance with the law of the State of New York, USA.

- D. The provisions of this Agreement are for the benefit of the parties hereto and not for any other person or entity except as specifically provided herein.
- E. Lessee shall have no right to set off lease payments due to GEE under this Agreement against obligations that GEE may have to Lessee under other agreements.